CDIA
CONSUMER DATA INDUSTRY ASSOCIATION
Empowering Economic Opportunity
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March 16, 2010

The Honorable Steve Lindberg
Chair, House Labor Committee
Michigan House of Representatives
P.O. Box 30014
Lansing MI 48909

Re: Oppose H.B. 4528

Dear Chairman Lindberg:

I write on behalf of the Consumer Data Industry Association (CDIA) to urge opposition to H.B. 4528. This bill would limit an employer's ability to protect her company's physical or intangible assets, or to adequately protect her customers from theft and fraud.

By way of background, CDIA was founded in 1906 and is the international trade association that represents some 200 consumer data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services.

House Bill 4528 would limit an employer's ability to check the credit histories of prospective job applicants. Employers want to hire the best people they can for the jobs they have available. Job applicants should be able to seek employment without fear of untoward discrimination. These are values CDIA shares with most Michigan residents.

In this current climate of economic uncertainty, where employers are likely choosing from a larger employment pool than they have seen in years, they need to be critically careful about protecting their businesses and their customers. A credit report offers a seven year look into an applicant's credit history and any difficulties caused by current conditions can be easily saved by many years of prior positive credit history.

Employers should not throw caution to the wind when hiring people. Applicants with a long history of good credit should not feel threatened by a seven year review of a credit history. The use of a prospective employee's credit history is legally protected, objectively tested, and reliably proven to predict risk.

A. Credit Reports for Employment Purposes are Legally Protected

1. General Protections

The federal Fair Credit Reporting Act (FCRA) governs consumer reports, regulates consumer reporting agencies, and protects consumers. As a touchstone to that law, consumer reporting agencies are required to maintain reasonable procedures to assure maximum possible accuracy. There are many other consumer protections as well. For example,

- Those that furnish data to consumer reporting agencies cannot furnish data they know is erroneous, and they are required them to correct and update information.
- Consumers have a right to dispute information on their credit reports with consumer reporting agencies or lenders and the laws require dispute resolution in not more than 30 days (45 days in certain circumstances). If a dispute cannot be verified, then the information must be removed in the consumer's favor.
- A consumer reporting agency that violates federal law is subject to private rights of action, enforcement by the FTC, and the state attorney general.
- Consumers are entitled to obtain one free credit report per year per consumer reporting agency.
- Consumers have a right to place fraud alerts on their credit reports.
- Consumers have a right to block information from appearing on a credit report if that information was subject to identity fraud.

2. Protections Specific to Employment Screening

In addition to the general protections above, there are protections specific to consumer reports for employment purposes. The allows employers to review the credit histories of prospective and existing employees. However, this legal right comes with certain obligations. In short,

- Prior to requesting a consumer report, an employer must provide to the prospective employee a written notice stating the source of the information and how it will be used.
- The employer must also provide a copy of the consumer report to the consumer upon request, prior to taking an adverse action.
- If an adverse employment action is taken against a prospective employee due to the information contained in a consumer credit report, the employer must first provide the name and contact information for the consumer reporting agency to the consumer and explain the reasons for the adverse action.

3. Credit Reports Do Not Contain Racial/Ethnic Information; Credit Scores are Not Used for Employment Screening

It is critical to consider other protections in place for employment screening use of credit reports.

- Credit reports do not contain a consumer's race, gender, religion, creed, color, national origin, or date of birth.
- Credit *scores* are not used for employment purposes.

B. Credit Reports for Employment Purposes are Objectively Tested.

The reliability of consumer reports is proven through economic incentives, regulators' reports, and consumer reviews.

1. Economic Incentives to Ensure Maximum Reliability.

In addition to legal obligations and industry standards, there is an even bigger incentive for credit reports to be reliable. The FTC put it best: there is a "market incentive[] to maintain and improve the accuracy and completeness of [credit] reports."[1] There are approximately 200 million Americans with credit reports and credit reports are requested more than 27 million times each and every day. If credit reports were not reliable, they would not be used by businesses to manage their risks.

2. Debunking the Public Interest Reports.

Reports issued by the U.S. Public Interest Research Group (PIRG) and Consumers Union (CU) are often cited to perpetuate the myth of inaccuracies.

- The first PIRG report, issued in 1998, reviewed 133 files of 88 people (out of 200 million Americans with credit histories). The second PIRG report in 2004 reviewed the credit reports of 154 people, most of whom were PIRG members or staffers. The sample sizes were not representative of the population, nor were the conclusions drawn statistically sound. For example, PIRG did not seek the input of creditors with regard to likelihood of an adverse credit decision, and based its conclusions on its own staffs' opinions as to who would or would not receive credit.
- Consumers Union's report was based on its asking 57 employees and their relatives to obtain their credit reports and identify anything they thought was wrong, regardless of whether it might actually impact the credit decision and again based on the consumers' own conclusions.
- The Federal Trade Commission reviewed the PIRG and CU reports and found "questions have...been raised about the sample size and representativeness of the samples", and neither of these organizations "relied on the participation of all of the...key stakeholders in the credit reporting process."[2]

The General Accounting Office reviewed available literature on perceived inaccuracies in consumer reports and concluded that

> the studies did not use a statistically representative methodology, examining on the credit files of their employees who verified the accuracy of the information, and counted any error as an inaccuracy regardless of the potential impact. Similarly, these studies use varying definitions in identifying errors, and providing some obscure explanations of how they carried out their work.[3]

3. What the Regulators Say.

Given the often-misstated definition of an inaccuracy, there is little scientific data in the marketplace today and one must turn to industry practices and independent sources. The Federal Reserve has reviewed the reliability of consumer reports and made several observations. Most importantly, the Federal Reserve, which looked at over 300,000 credit reports, noted in that report that

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[1] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, Dec. 2004, 7.*

[2] *Id., iii.*

[3] *General Accounting Office, Consumer Credit – Limited Information Exists on Extent of Credit Report Errors and Their Implications for Consumers*, GAO-03-1036T (July 31, 2003), 9-10.

Overall, research and creditor experience has consistently indicated that credit reporting company information...generally provides an effective measure of the relative credit risk posed by prospective borrowers.[4]

4. *What Consumers Reviews Show.*

Between December 2004 and December 2006, over 52 million free credit reports were provided to consumers who exercised their free credit report rights under the FCRA. CDIA estimates that through the combination of direct-to-consumer products and consumers exercising their rights under the FCRA (including the right to one free disclosure per year) nationwide consumer reporting agencies have issued over 160 million disclosures from December of 2004 to June 2007.

Data from free credit reports provided to consumers who exercised their free credit report rights under the FCRA shows that 89% of the credit file disclosures issued resulted in no disputes. There are a number of points to consider with regard to the 11% of consumers who did submit a dispute:

- The 11% dispute rate is low by all measures.
- Out of 52 million credit file disclosures reviewed by consumers, only 1.98% of these resulted in a dispute where data was deleted.
- Many disputes, perhaps as much as 55%, are in reality a request that data furnishers update accurate data in a more timely fashion.
- A dispute is not synonymous with an error. Approximately one-third of consumer disputes are from credit clinic attempts to delete accurate data.

5. *Credit Reports Do Not Contain Racial or Ethnic Data.*

Credit reports do not contain racial or ethnic data, nor do they contain information about religion, creed, color, or national origin. Credit reports are objective and do not take in to account how one looks, where one is from, or where one goes to worship.

C. Credit Reports are a Reliably Proven Predictor of Risk

Employers work hard to create working environments that are safe and secure for themselves, their employees, and their customers. Employees and customers expect and demand safety and security in places they work and visit. It is important to consider the bill in light of some key statistics provided by the Association of Certified Fraud Examiners (ACFE). For example,

- Employee theft accounts for more than $994 billion annually. The average employee embezzlement totals more than $175,000, but that number increases to $200,000 for organizations with less than 100 employees.
- The median length of time it takes to discover employee fraud is 24 months.
- The Association of Certified Fraud Examiners (ACFE) reviewed occupational fraud between early-2006 and early-2008. The top two red flag warnings exhibited by perpetrators leading up to the fraud were instances where the fraudster was living beyond his or her financial means (present in 39% of all cases with a median loss of $250,000) or experiencing financial difficulties (present in 34% of all cases with a median loss of $111,000).[5]

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[4] *An Overview of Consumer Data and Consumer Reporting, Federal Reserve Bulletin, Feb. 2003, 50-51* (citations omitted); *See also, Credit Reporting Accuracy and Access to Credit, Federal Reserve Bulletin, Summer 2004, 320.*
[5] Association of Certified Fraud Examiners 2008 Report to the Nation. http://www.acfe.com/documents/2008-rttn.pdf (viewed March 11, 2010).

Conclusion

The use of a prospective employee's credit history is legally protected, objectively tested, and reliably proven to predict risk. House Bill 4528 would stand in the way of an employer's ability to fully vet prospective candidates to the detriment of employers and their businesses. We hope you and your committee will oppose this legislation.

Sincerely,

Eric J. Ellman
Vice President, Public Policy and Legal Affairs